

Oklahoma Statutes Citationized

Title 85. Workers' Compensation

Chapter 14 - Medical Care

Section 328 - Employer Selection of Treating Physician - Petition for Change - Procedure for Approval of Workplace Medical Plan

Cite as: O.S. §, __ __

Two Enactments Affected this Section During the 2013 Legislative Session

Laws 2013, SB 1062, c. 208, § 171, eff. February 1, 2014, repealed this section.

Laws 2013, HB 2201, c. 254, § 39, eff. January 1, 2015, amended this section as follows:

A. If a self-insured employer, group self-insurance association plan, an employer's workers' compensation insurance carrier or an insured, which shall include any member of an approved group self-insured association, policyholder or public entity, has contracted with a workplace medical plan that is certified by the State **Commissioner of Health** as provided in this act, the employer shall select for the injured employee a treating physician from the physicians listed within the network of the certified workplace medical plan. The claimant may apply to the certified workplace medical plan for a one-time change of physician to another appropriate physician within the network of the certified workplace medical plan by utilizing the dispute resolution process set out in the certified workplace medical plan on file with the **State Department of Health**. Notwithstanding any other provision of law, those employees who are subject to such certified workplace medical plan shall receive medical treatment in the manner prescribed by the plan.

B. The provisions of this section shall not preclude an employee, who has exhausted the dispute resolution process of the certified workplace medical plan, from petitioning the Workers' Compensation Court for a change of treating physician within the certified workplace medical plan or, if a physician who is qualified to treat the employee's injuries is not available within the plan, for a change of physician outside the plan, if the physician agrees to comply with all the rules, terms and conditions of the certified workplace medical plan; or an employee from seeking emergency medical treatment.

C. Any person or entity may make written application to the State **Commissioner of Health** to have a workplace medical plan certified that provides management of quality treatment to injured employees for injuries and diseases compensable under the Workers' Compensation Code. Each application for certification shall be accompanied by a fee of One Thousand Five Hundred Dollars (\$1,500.00). A workplace medical plan may be certified to provide services to a limited geographic area. A certificate is valid for a five-year period, unless revoked or suspended. Application for certification shall be made in the form and manner and shall set forth information regarding the proposed program for providing services as the Commissioner may prescribe. The information shall include, but not be limited to:

1. A list of the names of all medical providers who will provide services under the plan, together with appropriate evidence of compliance with any licensing or certification requirements for those providers to practice in this state; and

2. A description of the places and manner of providing services under the plan.

D. 1. The Commissioner shall not certify a plan unless the Commissioner finds that the plan:

a. proposes to provide quality services for all medical services which:

(1) may be required by the Workers' Compensation Code in a manner that is timely, effective and convenient for the employee, and

(2) utilizes medical treatment guidelines and protocols substantially similar to those established for use by medical service providers which have been recommended by the Physician Advisory Committee and adopted by the Administrator pursuant to this act. If the Administrator has not adopted medical treatment guidelines and protocols, the Commissioner may certify a plan that utilizes medical guidelines and protocols established by the plan if, at the discretion of the Commissioner, the guidelines and protocols are reasonable and will carry out the intent of the Workers' Compensation Code. Certified plans must utilize medical treatment guidelines and protocols substantially similar to those adopted by the Administrator pursuant to this act, as such guidelines and protocols become adopted,

- b. is reasonably geographically convenient to residents of the area for which it seeks certification,
- c. provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of service,
- d. provides adequate methods of peer review, utilization review and dispute resolution to prevent inappropriate, excessive or medically unnecessary treatment, and excludes participation in the plan by those providers who violate these treatment standards,
- e. requires the dispute resolution procedure of the plan to include a requirement that disputes on an issue, including a subsequent change of physician as described in the provisions of this section, related to medical care under the plan, be attempted to be resolved within ten (10) days of the time the dispute arises and if not resolved within ten (10) days, the employee may pursue remedies in the Court,
- f. provides aggressive case management for injured employees and a program for early return to work,
- g. provides workplace health and safety consultative services,
- h. provides a timely and accurate method of reporting to the Commissioner necessary information regarding medical service costs and utilization to enable the Commissioner to determine the effectiveness of the plan,
- i. authorizes necessary emergency medical treatment for an injury provided by a provider of medical, surgical, and hospital services who is not a part of the plan,
- j. does not discriminate against or exclude from participation in the plan any category of providers of medical, surgical, or hospital services and includes an adequate number of each category of providers of medical, surgical, and hospital services to give participants access to all categories of providers and does not discriminate against ethnic minority providers of medical services, and
- k. complies with any other requirement the Commissioner determines is necessary to provide quality medical services and health care to injured employees.

2. The Commissioner may accept findings, licenses or certifications of other state agencies as satisfactory evidence of compliance with a particular requirement of this section.

E. If any insurer fails to contract with or provide access to a certified workplace medical plan, an insured, after sixty (60) days' written notice to its insurance carrier, shall be authorized to contract independently with a plan of his or her choice for a period of one (1) year, to provide medical care under the Workers' Compensation Code. The insured shall be authorized to contract, after sixty (60) days' written notice to its insurance carrier, for additional one-year periods if his or her insurer has not contracted with or provided access to a certified workplace medical plan.

F. A workers' compensation insurance carrier or a group self-insurance association plan may grant a ten-percent premium reduction to an employer who is not experience rated when the employer participates in a certified workplace medical plan.

G. The Commissioner shall refuse to certify or shall revoke or suspend the certification of a plan if the Commissioner finds that the program for providing medical or health care services fails to meet the requirements of this section, or service under the plan is not being provided in accordance with the terms of the plan.

H. The State **Commissioner of Health** shall implement a site visit protocol for employees of the **State Department of Health** to perform an inspection of a certified workplace medical plan to ensure that medical services to a claimant and the medical management of the claimant's needs are adequately met in a timely manner and that the certified workplace medical plan is complying with all other applicable provisions of this act and the rules of the **State Department of Health**. Such protocol shall include, but not be limited to:

1. A site visit shall be made to each certified workplace medical plan not less often than once every year, but not later than thirty (30) days following the anniversary date of issuance of the initial or latest renewal certificate;
2. A site visit shall conclude with a determination that a certified workplace medical plan is or is not operating in accordance with its latest application to the **State Department of Health**;
3. Compliant operations shall include, but not be limited to:
 - a. timely and effective medical services available with reasonable geographic convenience,
 - b. appropriate treatment guidelines and protocols, and
 - c. effective programs for utilization review, case management, grievances, and dispute resolution;
4. Performance of a site visit shall include:

- a. inspection of organizational documentation,
 - b. inspection of systems documentation and processes,
 - c. random or systematic sampling of closed and open case management cases (files),
 - d. random or systematic sampling, or a one-hundred-percent inspection of all dispute resolution, grievance, and Department of Health request for assistance files,
 - e. workplace medical plan employee and management interviews, as appropriate;
5. An initial site visit may occur with an interval of less than twelve (12) months to a recently certified plan, or a site visit may occur more often than once in every twelve (12) months if the State **Commissioner of Health** has reason to suspect that a plan is not operating in accordance with its certification;
6. If a deficient practice is identified during a site visit, the **State Department of Health** shall require a certified workplace medical plan to submit a timely and acceptable written plan of correction, and then may perform a follow-up visit or visits to ensure that the deficient practice has been eliminated;
7. A deficient practice that is not remedied by a certified workplace medical plan on a timely basis shall require the State **Commissioner of Health** to revoke or to suspend the certification of a plan;
8. The fees payable to the **State Department of Health** shall be:
- a. One Thousand Five Hundred Dollars (\$1,500.00) for an initial, annual site visit,
 - b. One Thousand Dollars (\$1,000.00) if a follow-up visit is performed,
 - c. separate from the once in five (5) years certification application fee, and
 - d. charged only if less than two site visits occur in a twelve-month period; and
9. In addition to the site visit fee, employees of the **State Department of Health** may charge to the certified workplace medical plan reasonable travel and travel-related expenses for the site visit such as overnight lodging and meals. A certified workplace medical plan shall reimburse travel expenses to the **State Department of Health** at rates equal to the amounts then currently allowed under the State Travel Reimbursement Act.
- I. The **State Board of Health** shall adopt such rules as may be necessary to implement the provisions of this act and this section. Such rules shall authorize any person to petition the State **Commissioner of Health** for decertification of a certified workplace medical plan for material violation of any rules promulgated pursuant to this section.

Historical Data

Laws 2011, SB 878, c. 318, § 28; Repealed by Laws 2013, SB 1062, c. 208, § 171, eff. February 1, 2014; Amended by Laws 2013, HB 2201, c. 254, § 39, eff. January 1, 2015 ([superseded document available](#)).

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